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**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

RAYMOND WRIGHT, an individual and )  
resident of Nevada; on behalf of himself and )  
all similarly-situated individuals, )

CASE NO.: 2:15-CV-00056-JAD-NJK

Plaintiffs, )

vs. )

JACOB TRANSPORTATION SERVICES, )  
LLC, a Nevada Limited Liability Company, )  
D/B/A EXECUTIVE LAS VEGAS, )

Defendant. )

**DEFENDANT JACOB TRANSPORTATION SERVICES, LLC'S MOTION TO  
STRIKE DECLARATION OF MOLLY E. NEPHEW (DKT. NO. 79-1) AND PORTIONS  
OF PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY  
JUDGMENT AS TO PLAINTIFF'S CLAIM FOR OVERTIME WAGES (DKT. NO. 79)**

Defendant Jacob Transportation Services, LLC (hereinafter referred to as "Defendant")  
moves the Court to strike from the record the Declaration of Molly E. Nephew (Dkt. No. 79-1)  
and certain portions of Plaintiff's Response to Defendant's Motion for Summary Judgment as to  
Plaintiff's Claim for Overtime Wages (Dkt. No. 79) because Plaintiff and his counsel

1 improperly referenced the parties' settlement discussions. This Motion is based on the  
 2 following Memorandum of Points and Authorities, the Declaration of James J. Jimmerson, the  
 3 papers and pleadings on file, and any oral argument which may be allow at the hearing on this  
 4 matter.

5  
 6 DATED this 6 day of July, 2018.

7 THE JIMMERSON LAW FIRM, P.C.

8  
 9 By: Kevin J. Hejmanowski  
 10 JAMES J. JIMMERSON, ESQ.  
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 16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 Ms. Molly E. Nephew, Esq's Declaration (Dkt. No. 79-1), specifically paragraphs 2, 3, 4,  
 18 and 5, and the corresponding parts of Plaintiff's Response to Defendant's Motion for Summary  
 19 Judgment as to Plaintiff's Claim for Overtime Wages (Dkt. No. 79), specifically p. 1, lns. 20-28  
 20 (starting with the word "Prior" and ending with the word "Parties); p. 2, lns. 1-5 (starting with the  
 21 word "would" and ending with the word "moot"), p. 3, lns. 11-27 (starting with the word "and"  
 22 and ending with the word "FSLA"), and p. 4, ln. 1 (ending the word "filing") should be struck  
 23 from the record because of Plaintiff counsel's improper reference to the parties' settlement  
 24 discussions and statements made by Defendant's counsel during those discussions. See  
 25 Declaration of James J. Jimmerson, attached as Exhibit A hereto. Federal Rules of Evidence 408  
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 27  
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entitled “Compromise Offers and Negotiations” provides that statements made during settlement negotiations are not admissible to prove or disprove the validity of a disputed claim:

Rule 408. Compromise Offers and Negotiations

(a) Prohibited Uses. Evidence of the following is not admissible – on behalf of any party – either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction:

(1) furnishing, promising, or offering – or accepting, promising to accept, or offering to accept – a valuable consideration in compromising or attempting to compromise the claim; and

(2) conduct or a statement made during compromise negotiations about the claim – except when offered in a criminal case and when the negotiations related to a claim by a public office in the exercise of its regulatory, investigative, or enforcement authority.

See F.R.C.P. 408; see also *Kravitz, Schnitzer, Sloane & Johnston, Chtd. v. Asta Funding, Inc.*, No. 2:10-CV-486-JCM-PAL, 2011 WL 2609397, \*2 (D. Nev. June 30, 2011) (Court struck parts of affidavit and motion to dismiss which referenced settlement discussions or a compromise). Specifically, the language which the *Kravitz* Court struck was:

Paragraph eight of Mr. Watson’s affidavit states that plaintiff “attempted to resolve the matter directly with [d]efendant. Early settlement discussions were conducted, where the [d]efendant has agreed to compensate [plaintiff] for fees earned and costs incurred, but the parties were unable to settle on a specific amount.

*Id.* Plaintiff’s counsel practices in Minnesota, and Minnesota has a rule of evidence entitled “Compromise and Offers to Compromise”:

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of a claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible.


See Minn. R. Evid. 408; *see also* *Esser v. Brophey*, 3 N.W.2d 3, 4-5 (Minn. 1942) (Statements made in compromise negotiations are not admissible); *see also* 23 Minn. Prac., Trial Handbook for Minn. Lawyers § 35:7 (2017-2018 ed.), which provides:

*It is virtually always improper to introduce evidence or to argue that a settlement was discussed, offered or rejected, or the details of or statements in any such negotiations. Minn. R. Evid. 408; Admissibility of evidence of unperformed compromise agreement, 26 A.L.R.2d 858; Admissibility of admissions made in connection with offers or discussions of compromise, 15 A.L.R.3d 13. The purpose, of course, is to encourage settlements without fear of later adverse exploitation of the negotiations. (Emphasis added).*

Accordingly, the Declaration of Molly E. Nephew (Dkt. No. 79-1), specifically paragraphs 2, 3, 4, and 5, and the corresponding parts of Plaintiff's Response to Defendant's Motion for Summary Judgment as to Plaintiff's Claim for Overtime Wages (Dkt. No. 79) referencing the parties' settlement discussions, specifically p. 1, Ins. 20-28 (starting with the word "Prior" and ending with the word "Parties"); p. 2, Ins. 1-5 (starting with the word "would" and ending with the word "moot"), p. 3, Ins. 11-27 (starting with the word "and" and ending with the word "FSLA"), and p. 4, ln. 1 (ending the word "filing") should be struck from the record.

DATED this 6 day of July, 2018.

THE JIMMERSON LAW FIRM, P.C.

By:   
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 Services, LLC dba Executive Las Vegas

**CERTIFICATE OF SERVICE**

I hereby certify that on, July 6, 2018, I served a copy of this **DEFENDANT JACOB TRANSPORTATION SERVICES, LLC'S MOTION TO STRIKE DECLARATION OF MOLLY E. NEPHEW (DKT. NO. 79-1) AND PORTIONS OF PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AS TO PLAINTIFF'S CLAIM FOR OVERTIME WAGES (DKT. NO. 79)** via electronic means in accordance with the court's order requiring electronic service in this case, and that it was served on all parties registered with the court's CM / ECF system of electronic service.

/s Kevin Hejmanowski  
An Employee of the Jimmerson Law Firm, P.C.